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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)**

THE PEOPLE,

Plaintiff and Respondent,

v.

RONALD IRVING FILKINS, II,

Defendant and Appellant.

C062996

(Super. Ct. No. CM030933)

In May 2009, defendant Ronald Irving Filkins, II, repeatedly struck his wife in the face during an argument, leading her to believe she had a broken nose.

Defendant entered a negotiated plea of guilty to corporal injury to a spouse. (Pen. Code, § 273.5, subd. (a).)¹ The trial court sentenced defendant to four years in state prison, and awarded 120 days of presentence custody credit consisting of 80 days of actual time and 40 days of conduct credit.

¹ Undesignated statutory references are to the Penal Code.

Defendant's sole contention on appeal is that the court should have applied the recent amendments to section 4019 to the award of presentence credits.² He is correct.

DISCUSSION

Defendant contends that he is entitled to additional presentence custody credit based on the January 2010 amendments to section 4019. The People respond that defendant is not entitled because the recent amendments should not be interpreted to apply retroactively.

The Supreme Court has granted review to resolve a split in authority over whether January 2010 amendments to section 4019 apply to pending appeals. (*People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963 [giving retroactive effect to amendments]; accord, *People v. Pelayo* (2010) 184 Cal.App.4th 481, review granted July 21, 2010, S183552; *People v. Landon* (2010) 183 Cal.App.4th 1096, review granted June 23, 2010, S182808; *People v. House* (2010) 183 Cal.App.4th 1049, review granted June 23, 2010, S182813; contra, *People v. Hopkins* (2010) 184 Cal.App.4th 615, review granted July 28, 2010, S183724; *People v. Otubuah* (2010) 184 Cal.App.4th 422, review granted July 21, 2010, S184314;

² Defendant's opening brief was filed one day before this court's miscellaneous order No. 2010-002, filed March 16, 2010, in which we deemed any defendant to have raised the issue (without additional briefing) of whether amendments to section 4019, effective January 25, 2010, apply retroactively to any pending appeal and entitle the defendant to additional presentence credits.

People v. Rodriguez (2010) 182 Cal.App.4th 535, review granted June 9, 2010, S181808.)

As we await resolution of the question, we conclude the amendments apply to all appeals pending as of January 25, 2010, including defendant's appeal. (*In re Estrada* (1965) 63 Cal.2d 740, 745 [Amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final."]; *People v. Doganiere* (1978) 86 Cal.App.3d 237, 240 [applying *Estrada* to amendment involving conduct credits]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying the rule of *Estrada* to amendment of section 2900.5 allowing award of custody credits].) Defendant is not among the prisoners excepted from the additional accrual of credit. (§ 4019, subds. (b)(2), (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Therefore, having served 80 days in actual custody, defendant is now entitled to 80 days of presentence conduct credit, rather than the 40 days awarded by the trial court.

DISPOSITION

The judgment is modified to reflect that defendant is entitled to a total of 160 days of presentence custody credits, consisting of 80 days of actual custody plus 80 days of conduct credit. As modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification and to forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

_____, BUTZ, J.

We concur:

_____, SCOTLAND, P. J.

_____, CANTIL-SAKAUYE, J.